

REMARKS

The present application was filed on February 24, 2004, with claims 1-19, all of which remain pending. Claims 1, 16 and 19 are the independent claims.

Claims 1-3, 6 and 9-19 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2005/0152354 (hereinafter “Abel”) in view of U.S. Patent No. 7,164,658 (hereinafter “Shenoy”).

Claims 4 and 5 are rejected under 35 U.S.C. §103(a) as being unpatentable over Abel in view of U.S. Patent Publication No. 2003/0128687 (hereinafter “Worfolk”).

Claims 7 and 8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Abel in view of U.S. Patent No. 6,553,035 (hereinafter “Schwartz”).

Applicants have amended claim 6 solely to correct a minor typographical error. Applicants respectfully seek entry of the present amendment pursuant to 37 C.F.R. §1.116(b)(2).

Applicants respectfully request reconsideration of the present application in view of the following remarks.

As a preliminary matter, Applicants note that dependent claims 4, 5, 7 and 8 are indicated as being unpatentable over Abel in view of Worfolk or Schwartz. Applicants note that each of these claims are dependent on independent claim 1, which is rejected over the combination of Abel and Shenoy. Accordingly, the Examiner appears to have mischaracterized the present rejections of these claims by omitting the Shenoy reference.

Independent claim 1 includes a limitation directed to distributing parts of a split traffic flow to respective ones of a plurality of participating nodes wherein at least a first one of the participating nodes receiving one of the parts of a traffic flow transmits at least a portion of its received part to at least a second one of the participating nodes receiving another one of the parts of the traffic flow.

An illustrative embodiment within this limitation is described in the present specification at, for example, page 6, line 13, to page 7, line 4. As shown in FIG. 2D, node 1 distributes parts of a split traffic flow to respective ones of a plurality of participating nodes. These participating nodes include nodes 2 and 3, each of which receives one of the parts of the traffic flow. As shown in FIG. 2F, node 3 transmits at least a portion of its received part to node 2, which previously received another one of the parts of the traffic flow from node 1.

The Examiner concedes that Abel fails to teach or suggest the limitation of claim 1 wherein at least a first one of the participating nodes receiving one of the parts transmits at least a portion of its received part to at least a second one of the participating nodes receiving another one of the parts. Instead, the Examiner contends that this limitation is disclosed by Shenoy at column 5, lines 9-47, which describes components of edge router 120. See, e.g., Shenoy at column 4, lines 53-67, and column 5, lines 48-50.

Applicants respectfully submit that, as shown in FIG. 1 of Shenoy, edge router 120 transmits each of a plurality of datagrams to either switch 130-A or 130-B. Neither switch 130-A nor switch 130-B transmits any portion of its received part to the other. Instead, switch 130-A transmits all datagrams received from edge router 120 to switch 140-A and switch 130-B transmits all datagrams received from edge router 120 to switch 140-B. See Shenoy at, for example, column 3, lines 59-65; column 4, lines 11-45; and column 4, lines 63-67.

Thus, Shenoy fails to teach or suggest the limitation of claim 1 directed to distributing parts of a split traffic flow to respective ones of a plurality of participating nodes wherein at least a first one of the participating nodes receiving one of the parts of a traffic flow transmits at least a portion of its received part to at least a second one of the participating nodes receiving another one of the parts of the traffic flow. Accordingly, the proposed combination of Abel and Shenoy fails to meet the limitations of claim 1.

Furthermore, even if one could combine Abel and Shenoy so as to reach the limitations of claim 1, the Examiner has failed to identify a cogent motivation for doing so. Applicants note that both the Supreme Court and the Federal Circuit have held that “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Intern. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (U.S., Apr. 30, 2007), quoting *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006).

In the present Office Action at page 4, last paragraph, the Examiner contends that it would have been obvious to combine Abel and Shenoy “because once the packet flow is dynamically distributed over network processor, implementing teaching of virtual circuitry in the each network processor, in order to further transfer divided flow into virtual circuit, which can further

communicate with another virtual circuit located in different network processor who has received respective received parts to one another.”

To the extent the above statement is understood, it appears to be inapposite to combining Abel with Shenoy so as to reach the limitations of claim 1. For example, claim 1 does not include limitations directed to dynamically distributing a packet flow over a network processor or implementing virtual circuitry in each network processor. Accordingly, Applicants respectfully submit that the above statement fails to provide sufficient motivation for combining Abel with Shenoy so as to reach the limitations of claim 1.

Independent claims 16 and 19 contain limitations similar to those of claim 1 and are thus believed allowable for at least the reasons identified above with regard to independent claim 1.

Dependent claims 2-15, 17 and 18 are believed allowable for at least the reasons identified above with regard to the independent claims from which they depend. Furthermore, at least one of these claims defines separately patentable subject matter.

For example, dependent claim 6 recites a limitation wherein the traffic flow comprises virtually-concatenated data traffic. In formulating this rejection, the Examiner points to paragraph [0033] of Abel, which describes a network processing system wherein a sequenced load balancer device analyzes an incoming packet flow from a high-speed link and dynamically distributes packets to independent network processors. After processing, the packets are recombined in the sequenced load balancer and transmitted back to the high-speed link. The Examiner contends in the present Office Action at page 6, second paragraph, that “it is well-known to one skilled in the art that such system [sic] should inherently have virtual [sic] concatenated data traffic.”

It should be noted that MPEP 2144.03 states that “[a]ny rejection based on assertions that a fact is well-known or is common knowledge in the art without documentary evidence to support the examiner’s conclusion should be judiciously applied. Furthermore, . . . any facts so noticed should be of notorious character and serve only to ‘fill in the gaps’ in an insubstantial manner which might exist in the evidentiary showing made by the examiner to support a particular ground for rejection.” Applicants respectfully respect that, for each invocation of official notice, the Examiner provide either documentary evidence or an affidavit or declaration setting forth specific factual statements and explanation to support the finding, as required by 37 C.F.R. § 1.04(d)(2) in order for such a rejection to be maintained.

Moreover, Applicants respectfully submit that it is not inherent that the packet flow described in the relied-upon portion of Abel comprise virtually-concatenated data traffic, especially in light of the requirements for a proper finding of inherency. See, e.g., *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (“To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’”) (citations omitted); *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (“In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.”) (emphasis in original). See generally MPEP 2112.

Applicants respectfully submit that the relied-upon portion of Abel does not preclude the use of alternate concatenation techniques such as contiguous concatenation and arbitrary concatenation. Accordingly, Applicants respectfully submit that it is not inherent that the packet flow described in the relied-upon portion of Abel comprise virtually-concatenated data traffic. Accordingly, the present rejection of claim 6 is improper and should be withdrawn.

Dependent claim 13 recites a limitation “wherein if the packet header of a given packet in the part of the flow received by a given one of the participating nodes indicates that the participating node is a final destination node for that packet, the packet is stored in a resequencing buffer of the participating node.”

The Examiner contends that this limitation is met by Abel at [0056], which discloses:

Flow bucket identifier is used as an index in balance history memory 215 to access balance history that is used by packet queue and dequeue unit 265 to determine whether a processed packet has to be transferred to outgoing port 130-j or needs to be memorized in packet memory 255. Flow bucket identifier is also used as an index to store packet pointer in queue pointer memory 280 when a processed packet needs to be stored in or retrieved from packet memory 255.

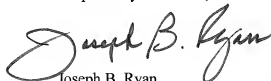
Applicants respectfully note that the relied-upon portion of Abel fails to teach the limitation of claim 13 wherein a packet is stored in a resequencing buffer of a participating node if a packet header of that packet indicates that the participating node is a final destination node for that packet. Indeed, Abel directly teaches away from this limitation by disclosing a technique wherein a packet,

instead of being transmitted directly to another node, may be temporarily stored in packet memory 255 within sequenced load balancer 100 prior to being eventually transmitted to another node. Thus, Abel not only fails to teach storing a packet in a resequencing buffer of a participating node if a packet header of that packet indicates that the participating node is a final destination node for that packet, but it in fact teaches away an incompatible arrangement wherein the participating node in which the packet is stored is not the final destination node for that packet. See Abel at [0057].

Shenoy fails to supplement the above-noted fundamental deficiency of Abel to reach the limitations of claim 13. Accordingly, the proposed combination of Abel and Shenoy fails to meet the limitations of claim 13.

In view of the foregoing, Applicants believe that claims 1-19 are in condition for allowance, and respectfully request withdrawal of the present rejections.

Respectfully submitted,

A handwritten signature in black ink that reads "Joseph B. Ryan". The signature is fluid and cursive, with the first name "Joseph" and last name "Ryan" clearly legible.

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